

November 13, 2000

Mary Cottrell, Secretary

Department of Telecommunications and Energy

One South Station

Boston, Massachusetts 02110

**Re: *Boston Gas Company*, D.P.U. 96-50-D Remand Proceeding**

Dear Secretary Cottrell:

By this letter, the Attorney General responds to the Department's October 30, 2000 request for "comments regarding how to proceed with the remand from the Supreme Judicial Court in *Boston Gas Co. v. Department of Telecommunications & Energy*, SJ-1977-0323." This matter concerns the terms of the so-called price cap rate plan adopted in 1996 to govern the rates for Boston Gas Company from November 1997 through October, 2002. *Boston Gas Company*, D.P.U. 96-50 (1996). In particular, the remand concerns the inclusion within the "X" factor of the price cap formula of an offset to

recognize past accumulated cost inefficiencies as well as the level of "penalties" to which the Company could be exposed for major service quality failings. These two aspects of the Department's price cap were vacated and remanded to it by an August 13, 1999, order of the Supreme Judicial Court. Notwithstanding its stated recognition of the importance of action on the remand, on October 29, 1999, and again on October 31, 2000, the Department rejected arguments by the Attorney General that further application of the price cap plan should be deferred pending such action and, instead, allowed \$4.7 million of rate increases by the Boston Gas Company. *Boston Gas Company*, D.T.E. 99-85 (1999); *Boston Gas Company*, D.T.E. 00-74 (1999).

The Attorney General recommends that the Department proceed with the remand from the Supreme Judicial Court by terminating the operation of the Boston Gas price caps plan. While the plan would otherwise remain in effect for only one more year, it should not continue to be applied without some adjustment in regard to the accumulated inefficiencies factor that was adopted as a necessary and integral component of the price cap plan put into place for Boston Gas Company. However, in light of the fact that all facets of that price cap plan will need to be revisited within the next twelve to eighteen months and that revisiting the accumulated inefficiencies factor within the context of this remand will necessarily be time and resource intensive,<sup>(1)</sup> the Attorney General urges the Department to exercise its discretion in regard to the remand by terminating the operation of the price cap plan. Not only will such an approach avoid the expenditure of substantial time and resources by the Department and interested parties in regard to a issue that really cannot be addressed appropriately in isolation at a time when all of the components of the plan will soon be reconsidered in any event. Moreover, such an approach will also avoid the wholly unnecessary expenditure of time and resources in regard to the service quality penalty issue that has been rendered moot for any successor plan by the terms of Electric Restructuring Act. St.1997, c. 164; G.L. c. 164, § 1E.

If you have any questions or require any further information, please feel free to call me at 727-2200, extension 3446.

Sincerely,

George B. Dean

Assistant Attorney General

Chief, Regulated Industries Division

cc: Service List

1. The Attorney General interprets the \$6.1 million impact of the nearly fifteen month delay in responding to the remand by the Supreme Judicial Court as an indication that the Department views the issues posed in the remand as not being susceptible to a speedy resolution that does require either the introduction of new evidence or careful reconsideration of all of the elements of the price cap plan adopted in 1996.